



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2013

Mr. Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR2013-21862

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 508713 (TDLR #9659 and #9661).

The Texas Department of Licensing and Regulation (the "department") received two requests from the same requestor for all documents pertaining to a specified investigation and all information regarding the licensing and discipline of five named licensees. You state you have released some information to the requestor, with redactions permitted under the Act. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the information you have marked Exhibit 2A was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-21028 (2013). In this ruling, we concluded the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and release the remaining information. You now seek to withhold Exhibit 2A under sections 552.103 and 552.108 of the Government Code. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision

No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Because sections 552.103 and 552.108 do not prohibit the release of information or make information confidential, the department may not now withhold any previously released information under these exceptions. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). Thus, as we have no indication the law, facts, and circumstances on which Open Records Letter No. 2013-21028 was based have changed, the department must continue to rely on Open Records Letter No. 2013-21028 as a previous determination and withhold or release the information at issue in accordance with the previous ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address the submitted arguments for the remaining information not encompassed by the previous ruling.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.093 and 411.122 of the Government Code both provide the department is entitled to obtain from DPS CHRI that relates to a person who is a holder of a license issued by the department. *See id.* §§ 411.093, 411.122. However, the department may not release CHRI except as provided by chapter 411. *See id.* §§ 411.083, 411.084(c) (agency may not confirm existence or nonexistence of CHRI to any person not eligible to receive the information). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. We note, CHRI does not include driving record

information. *See* Gov't Code § 411.082(2)(B). You state the information you have marked in Exhibit 2B was obtained from DPS. Upon review, we agree the information you have marked in Exhibit 2B, along with the additional information we have marked in Exhibit 2B, consists of confidential CHRI obtained by the department from DPS regarding a licensee. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ *See* Gov't Code § 552.130. Accordingly, the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.²

In summary, the department must continue to rely on Open Records Letter No. 2013-21028 as a previous determination and withhold or release the information at issue in accordance with the previous ruling. The department must withhold the marked information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The department must withhold the driver's license information we have marked under section 552.130 of the Government Code. The remaining information must be released.³

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470(1987).

²We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

³We note the information being released contains an individual's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

[orl_ruling_info.shtml](#), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Neal', with a stylized, cursive script.

Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 508713

Enc. Submitted documents

c: Requestor
(w/o enclosures)